

ORDINANCE NO. 91-16

AN ORDINANCE REPEALING SECTIONS 2-6.00 THROUGH 2-6.02 AND 2-6.119 OF CHAPTER 2, ARTICLE 6; AMENDING SECTIONS 1-3.00 (b) (1) AND 1-3.06 (a) (6) OF CHAPTER 1, ARTICLE 3; AND ADDING SECTIONS 2-6.119 THROUGH 2-6.128 TO CHAPTER 2, ARTICLE 6 AND ARTICLE 11 TO CHAPTER 2 OF THE HAYWARD MUNICIPAL CODE PERTAINING TO THE REGULATION AND CONTROL OF AIRCRAFT NOISE AT HAYWARD AIR TERMINAL, HAYWARD, CALIFORNIA

WHEREAS, the City Council of the City of Hayward hereby finds and declares that:

(1) The City of Hayward is the proprietor and operator of the Hayward Air Terminal ("Airport") located within its corporate limits;

(2) Subject to any regulations or restrictions which may be imposed by state or federal law, the City as the airport proprietor has the authority to adopt reasonable rules regulating the use of the Airport, including the power to restrict or deny the use of the Airport to aircraft generating excessive noise levels;

(3) The control of airport noise is inherently a matter of local concern and there is a demonstrated need for noise regulation at the Airport;

(4) It is in the public interest that aircraft noise be reduced to ensure the peace and tranquillity of residential neighborhoods without impairing the ability of the Airport to serve the general aviation needs of the community and the national air transportation system;

(5) It is the policy of the City Council of the City of Hayward to make reasonable effort to reduce noise from aircraft operations at the Airport;

(6) In an effort to gather all available information, record citizens' complaints, and analyze and recommend solutions to the noise problem, the Airport staff has conducted a public survey and a series of public workshops on all aspects of the airport noise problem;

(7) The City Council has analyzed the results of the public workshops as well as the noise monitoring and other data regarding aircraft operations at the Airport and finds that the noisiest aircraft utilizing the Airport produce annoyances and citizen complaints far in excess of their proportion of total percentage of operation;

(8) The City Council has considered the economic impact and the costs and benefits of this ordinance as well as alternative noise restrictions and noise measures;

(9) One of the purposes of noise enforcement standards under this ordinance is to allow all current operators of noisy aircraft the flexibility to modify their aircraft or otherwise bring their activities into compliance; and

(10) A draft of this ordinance has been circulated and public meetings held to receive comments from interested parties on its provisions.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Section 2-6.119 of Chapter 2, Article 6 of the Hayward Municipal Code is hereby repealed.

Section 2. Sections 2-6.119 through 2-6.127 of Chapter 2, Article 6 of the Hayward Municipal Code are hereby added to read in full as follows:

"AIR TERMINAL RULES AND REGULATIONS. AIRCRAFT NOISE RESTRICTIONS.

"SEC. 2-6.119 DEFINITIONS. The following terms are defined as follows unless it is apparent from their context that a different meaning is intended:

"(a) Single Event Noise Exposure Level (SENEL). The single event noise exposure level, in decibels, is the noise exposure level of a single event, such as an aircraft flyby, measured over the time interval between the initial and final times for which the noise level of a single event exceeds a given threshold noise level;

"(b) A-Weighted Noise Level (NL). The A-weighted noise level, in decibels, is the sound pressure level measured using the slow dynamic characteristics for type 1 or type 2 sound level meters specified in the American National Standard Specifications for Sound Level Meters, ANSI S1.4-1971 (or latest revision thereof). The A-weighting characteristics modify the frequency response of the measuring instrument to account approximately for the frequency characteristics of the human ear;

"(c) Federal Aviation Administration (FAA) Advisory Circular 36-3F FAA Advisory Circular 36-3F). Federal Aviation Administration publication entitled "Estimated Noise Levels in A-weighted Decibels," which lists take-off

and approach noise levels for all fixed-wing aircraft in the U.S. Fleet (except for experimental and antique aircraft) as measured at 21,325 feet (6,500 meters) from beginning of take-off roll for take-off noise and 6,652 feet (2,000 meters) from the landing threshold for approach noise. The phrase "FAA Advisory Circular 36-3F" shall refer to the Federal Aviation Administration Advisory Circular 36-3F, including all revisions thereof, or the version of that document currently in effect; and

- "(d) Enforcement Officer. The Airport Director and such other City employees as are designated by the Airport Director with the approval of the Public Works Director and the City Manager all acting under the direction and control of the City Manager, shall have the duty and authority to enforce the provisions of the Aircraft Noise Restrictions, pursuant to Section 836.5 of the California State Penal Code.

"SEC. 2-6.120 AIRCRAFT NOISE LIMIT.

- "(a) No aircraft may take off, land or otherwise operate at the Airport between the hours of 7:00 a.m. and 11:00 p.m. if it generates a Single Event Noise Exposure Level (SENEL) which exceeds the following values as measured at any one of the Airport's four (4) Noise Monitoring Terminals (NMT):

Runways 28L/28R:

NMT #1	98
NMT #2	98
NMT #3	98
NMT #4	98

Runways 10R/10L:

NMT #1	98
NMT #2	98
NMT #3	100
NMT #4	99

- "(b) No aircraft may take off, land or otherwise operate at the Airport at night between the hours of 11:01 p.m. and 6:59 a.m. if it generates a Single Event Noise Exposure Level (SENEL) which exceeds the following values as measured at any one of the Airport's four (4) Noise Monitoring Terminals (NMT):

Runways 28L/28R:

NMT #1	95
NMT #2	95
NMT #3	95
NMT #4	95

Runways 10R/10L:

NMT #1	95
NMT #2	95
NMT #3	97
NMT #4	96

"SEC. 2-6.121 PRESUMPTION OF AIRCRAFT NOISE VIOLATION.

- "(a) Between the hours of 7:00 a.m. and 11:00 p.m., any

aircraft which exceeds 77 on the dBA scale on take-off as listed in the FAA Advisory Circular 36-3F, shall be presumed to be in violation of the maximum single event noise levels established in Section 2-6.120 above;

"(b) Between the hours of 11:01 p.m. and 6:59 a.m., any aircraft which exceeds 73 on the dBA scale on take-off as listed in the FAA Advisory Circular 36-3F, shall be presumed to be in violation of the maximum single event noise levels established in Section 2-6.120 above;

"(c) Aircraft types and models which are not listed in Advisory Circular 36-3F will be allowed to operate at the Hayward Air Terminal only if:

"(i) The Federal Aviation Administration determines that the specific aircraft type and model would meet the FAA Advisory Circular 36-3F noise limits stated above if it were tested according to Federal Aviation Administration procedures; and

"(ii) The operator performs a flight test to the reasonable satisfaction of the Airport Director using operating procedures which indicate an ability to comply with the maximum noise levels established in Section 2-6.120.

"SEC. 2-6.122 REBUTTAL OF PRESUMPTION OF AIRCRAFT NOISE VIOLATION.

"(a) Aircraft owners or operators of aircraft presumed to be unable to meet the maximum noise limits established in Section 2-6.120 above shall be entitled to rebut the presumption to the reasonable satisfaction of the Airport Director by:

"(1) Furnishing evidence which establishes that the aircraft type and model would meet the FAA Advisory Circular 36-3F levels set in Section 2-6.121, including, but not limited to, changes in operating procedures, retrofitting measures, and changes in engine; and

"(2) Demonstrating an ability to comply with the maximum SENEL noise limits established in Section 2-6.120 by performing a flight test using safe operating procedures;

"(b) The Airport Director's approval shall not be unreasonably withheld;

"(c) If the above conditions are met, the specified aircraft

owner or operator shall be entitled to operate the approved aircraft at the Airport as long as the specified operating conditions identified in the flight test are followed during subsequent operations.

- "(d) Failure to comply with the specified operating conditions shall constitute a violation of these Aircraft Noise Restrictions. Upon the second violation of the Aircraft Noise Restrictions, the aircraft shall be excluded from the airport for a period of at least 6 months before operating privileges for that aircraft can be requested again.

"SEC. 2-6.123 EXEMPTIONS. The following categories of aircraft shall be exempt from the provisions of Section 2-6.120 above:

- "(a) All aircraft classified as Stage 3 aircraft by the Federal Aviation Administration;
- "(b) Aircraft operated by the United States of America or the State of California;
- "(c) Law enforcement, emergency, fire, or rescue aircraft operated by any county, city, subdivision or special districts of the state, when those aircraft are operating in emergency situations including emergency aircraft flights for medical purposes;
- "(d) Aircraft used for emergency purposes during an emergency which has been officially proclaimed by competent authority pursuant to the laws of the United States, the State of California, Alameda County, or the City of Hayward;
- "(e) Civil Air Patrol aircraft when engaged in actual search and rescue missions;
- "(f) Aircraft which are being operated under a declared in-flight emergency;
- "(g) Aircraft operating as a declared air ambulance emergency flight for medical purposes pursuant to Public Utilities Code Section 21662.4; and
- "(h) Aircraft engaged in take-offs or landings while conducting tests under the direction of the Airport Director in an attempt to rebut the presumption of aircraft noise violation pursuant to the provisions of Sections 2-6.121 and 2-6.122 above.

"Evidence of exemption status under subsections (f) and (g)

above must be provided to the Airport within seven (7) days of the flight.

"SEC. 2-6.124 CULPABILITY OF INSTRUCTOR PILOTS. In the case of any training flight in which both an instructor pilot and a student pilot are in the aircraft which is flown in violation of any of the Aircraft Noise Restrictions, the instructor pilot shall be rebuttably presumed to have caused the violation.

"SECTION2-6.125 CULPABILITY OF AIRCRAFT OWNER. For purposes of the Aircraft Noise Restrictions, if the pilot of an aircraft cannot otherwise be identified, the owner of an aircraft shall be presumed to be the pilot of the aircraft with authority to control the aircraft's operation, or presumed to have authorized or assisted in the aircraft's operation. The presumption may be rebutted only if the owner or lessee identifies the person who in fact was the pilot at the time of the asserted violation.

"SEC. 2-6.126 ENFORCEMENT PROVISIONS. Any person who operates an aircraft in violation of the Aircraft Noise Restrictions shall be guilty of an infraction. Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in California Government Code Section 36900. In addition, the Airport Director may issue orders imposing civil penalties for violations of the Aircraft Noise Restrictions. The following standards and procedures shall apply to the enforcement of these provisions:

- "(a) Upon the first violation of any provision of the Aircraft Noise Restrictions, a citation shall be issued to the violator and no civil penalty shall be imposed;
- "(b) Upon the second violation of any provision of the Aircraft Noise Restrictions within a three-year period, a second citation shall be issued and the violator shall be subject to an order imposing a civil penalty which may be a fine of up to \$500.00, a suspension of airport privileges or permits for up to one year, or both;
- "(c) Upon the third violation of any provision of the Aircraft Noise Restrictions within a three year period, a third citation shall be issued and the violator shall be subject to an order imposing a civil penalty which may be a fine of up to \$500.00, a suspension of airport privileges or permits for up to three years, or both;
- "(d) The Airport Director may also restrict access to and operating privileges at the airport subject to compliance with certain operating conditions in order to ensure future compliance with the Aircraft Noise Restrictions;

- "(e) Before issuing an order for a violation of the Aircraft Noise Restrictions, the Airport Director shall consider all relevant factors in each case including the wilfulness, severity and nature of the violation, the existence and use of safe noise abatement operating procedures appropriate to the aircraft, instructions issued by FAA air traffic control tower personnel for air traffic safety purposes, and extraneous factors beyond the pilot's control such as loss of power, maneuvers to avoid other aircraft or unusual weather conditions;
- "(f) Any person may appeal an order of the Airport Director imposing a civil penalty by filing a written appeal with the Public Works Director within seven (7) days of the date of the Airport Director's order. If the seventh day falls on a weekend or legal holiday observed by the City, then the appeal may be filed on the next workday.
- "(g) An order of the Public Works Director shall be final except for judicial review and shall not be appealable to the City Council;
- "(h) A wilful violation of a lawful order of either the Airport Director or the Public Works Director shall constitute a separate and distinct violation of these Aircraft Noise Restrictions;
- "(i) Any person who fails to pay a civil penalty within 30 days after the issuance of an order to do so shall pay a separate charge of ten percent (10%) of the unpaid amount of the civil penalty. The Airport Director may also exclude such person from the Airport until the penalty and any late charges are paid; and
- "(j) The remedies established herein are supplementary to any legal or equitable remedies available to the City in its municipal and proprietary capacities, including but not limited to its right to abate nuisances and hazards.

"SEC. 2-6.127 EXCLUSION OF AIRCRAFT FROM AIRPORT. In the event any aircraft has been operated in violation of any of the Aircraft Noise Restrictions or any other laws, rules or regulations of the City on three or more occasions within a three year period, that aircraft may be denied the right to tiedown, be based at, land or take off from the Airport for a period of three years except in emergencies for the preservation of life or property as reasonably determined by the Airport Director.

"SEC. 2-6.128 OPERATIVE DATE. Sections 2-6.119 through 2-

6.127 of this Article shall not be enforced until six (6) months after their adoption. This transition period is provided to permit education of the aviation community about the existence of these noise restrictions as well as alternative noise restrictions which were considered and rejected, to provide reasonable notification to the owners and operators of aircraft which are presumptively incapable of complying with such noise restrictions, and to permit compliance with the noise restrictions by allowing a reasonable time for transition to quieter models of aircraft or modification of existing equipment."

Section 3. Sections 2-6.00 through 2-6.02 of Chapter 2, Article 6 of the Hayward Municipal Code are hereby repealed.

Section 4. Chapter 2 of the Hayward Municipal Code is hereby amended to add Article 11 to read in full as follows:

"LIBRARY DEPARTMENT RULES AND REGULATIONS

"SEC. 2-11.00 LIBRARY RULES AND REGULATIONS. Rules and regulations for the administration and operation of the Library of the City of Hayward not inconsistent herewith shall be made by the City Manager; provided, however, the City Council may direct the City Manager to establish, rescind, or modify such rules and regulations not inconsistent herewith as it deems proper.

"Copies of all rules and regulations pertaining to use of the Library by the public shall be kept in the Library and available to inspection by the public.

"SEC. 2-11.01 PRIVILEGE OF USE. Any person may use Library materials and facilities within the Library in accordance with rules and regulations. No person shall remove from the Library any Library materials unless such person is a member of the Library as hereinafter defined, and then only in accordance with Library rules and regulations.

"SEC. 2-11.02 LIBRARY MEMBERSHIP. Application for membership in the Library shall be made upon a form to be furnished by the Library, and the Library shall issue to the applicant an official membership certificate after receipt of the membership fee, if appropriate. All memberships are subject to such rules and regulations for operation and use of the Library as may be made hereunder."

Section 5. Section 1-3.00 subdivision (b) (1) of Chapter 1, Article 3 of the Hayward Municipal Code is hereby amended to read in full as follows:

"(1) Chapter 2 Government and Administration (I) Article 6
Hayward Air Terminal Code"

Section 6. Section 1-3.06 subdivision (a) (6) of Chapter 1, Article 3 of the Hayward Municipal Code is hereby amended to read in full as follows:

"(6) Airport Director and Chapter 2, Article 6 Public Works Director"

Section 7. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 9th day of July, 1991, by Councilmember Campbell.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the 23rd day of July, 1991 by the following votes of members of said City Council.

AYES: COUNCILMEMBERS Campbell, Cooper, Jimenez, Randall,
Rodriquez, Ward
MAYOR Sweeney

NOES: NONE

ABSENT: NONE